

JUDGE DANIELS**07 CV 10593**

JAMES P. KRAUZLIS, ESQ.
 BADIAK & WILL, LLP
 106 3rd Street
 Mineola, New York 11501
 Our file: 07-F-011-JK

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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 ST. PAUL FIRE & MARINE INSURANCE CO. a/s/o
 Kanan Fashions, Inc.,

NOV 7 2007

U.S.D.C. S.D.N.Y.
CASHIERS

ECF CASE

Plaintiff,
 - against -
 AMERICAN AIRLINES, INC.,

07 Civ. () NOV 27 2007

COMPLAINT

U.S.D.C. S.D.N.Y.
CASHIERS

Defendant.

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Plaintiff, ST. PAUL FIRE & MARINE INSURANCE CO. a/s/o Kanan Fashions, Inc., by its attorneys, Badiak & Will, LLP, as and for its Complaint herein against the defendant, alleges upon information and belief as follows:

1. All and singular the following premises are true and constitutes claims involving the international transportation as defined in the Convention for the Unification of Certain Rules Relating to International Transportation by Air ("WARSAW Convention") and, as such, arises under a treaty of the United States and this Court has jurisdiction pursuant to 28 U.S.C. §1331 and/or involves a claim affecting Interstate Commerce within the meaning of 28 U.S.C. §1337 and/or arising under this Court's ancillary and/or pendent jurisdiction.

2. Plaintiff, St. Paul Fire & Marine Insurance Company (hereinafter referred to as "St. Paul"), is and was at all times hereinafter mentioned a corporation organized and existing

under and by virtue of the laws of the State of Minnesota and provided all-risk cargo insurance for the subject shipments hereinafter described, and maintained an office and place of business at 100 Baylis Road, Melville, New York, 11747.

3. Plaintiff St. Paul has paid the consignee and owner of the shipment mentioned hereinafter pursuant to a marine cargo insurance policy herein before described and brings this action on its own behalf and as agent and trustee on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action. The shipper and consignee hereinafter mentioned have performed all conditions required on their part to be performed with respect to the subject shipment.

4. Defendant, AMERICAN AIRLINES (hereinafter "AA") is and was a foreign corporation organized and existing under and by virtue of the laws a one of the states of the United States with an office and place of business at 100 E. 42nd Street, New York, New York 10017 and was at all times hereinafter mentioned engaged in business as an international air common carrier of goods for hire.

5. On or before November 18, 2005, at Columbo, Sri Lanka, defendant received from Gartex Industries, as shipper, a shipment of 494 cartons of men's garments, then being in good order and condition for carriage by air from Columbo, Sri Lanka, to New York, J.F.K. International Airport to be thereupon delivered to Kanan Fashions, the owner of the goods and plaintiff's assured, all pursuant to an airway bill issued by defendant AA numbered 630-2906-1292, dated November 18, 2005.

6. The shipment, when delivered to and received by defendant AA, was in good order and condition.

7. Thereafter, Defendant AA failed to deliver the shipment to the plaintiff's assured, Kanan Fashions, Inc., in the same good order and condition as when shipped, delivered to and received by defendant AA, said shipment having been delivered with water damage and impaired in value.

8. As a proximate result of defendant AA's breach of its obligations as an international air common carrier with respect to the subject shipment as aforesaid, plaintiff's assured has been damaged in the amount of \$43,303.91.

9. Plaintiff's assured has performed all of the conditions required on it's part to be performed with regard to the obligations and duties of defendant AA with respect

10. Accordingly, plaintiff St. Paul is entitled to bring this action as subrogee and is entitled to maintain an action against the defendant AA for the losses sustained to the subject shipment.

11. Plaintiff has been damaged in the amount of \$43,303.91 which amount, although duly demanded, has not been paid by defendant AA.

WHEREFORE, plaintiff prays:

(a) That process in due form of lay may issue against defendant citing it to appear and answer all and singular the matters aforesaid;

(b) That if defendant cannot be found within this District, then all of their property within this District be attached in the sum of \$43,303.91, with interest thereon and costs, the sum sued for in this Complaint;

(c) That judgment be entered in favor of plaintiff, St. Paul Fire & Marine Insurance Company, and against defendant American Airlines, in the amount of \$43,303.91, with interest and the costs and disbursements of this action; and

(d) That this Court grant to plaintiff such other and further relief as may be just and proper.

Dated: Mineola, New York
November 26, 2007

BADIAK & WILL, LLP
Attorneys for Plaintiff
ST. PAUL FIRE & MARINE INS. CO.

BY:

James P. Krauzlis (JK-4972)